

APPENDIX C  
UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
NEWARK VICINAGE

UNITED STATES OF AMERICA,	:	Civil Action No.
Plaintiff,	:	98-CV-4812 (WHW)
v.	:	
	:	
BECKMAN COULTER, INC., <i>et al.</i> ,	:	
Defendants.	:	
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	:	Civil Action No.
NEW JERSEY DEPARTMENT OF	:	98-CV-4781 (WHW)
ENVIRONMENTAL PROTECTION, <i>et al.</i> ,	:	Draft 7/23/8 12:40 pm
Plaintiffs,	:	
v.	:	
	:	
AMERICAN THERMOPLASTICS CORP., <i>et al.</i> ,	:	
Defendants.	:	

**JUDGMENT ON CONSENT AGAINST DEFAULTING THIRD-PARTY MUNICIPAL  
DEFENDANT GROUP MEMBER  
FOR FAILURE TO PAY REQUISITE AMOUNT PURSUANT TO PARTIAL CONSENT  
DECREE BETWEEN PLAINTIFFS, UNITED STATES OF AMERICA, NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ADMINISTRATOR OF  
THE NEW JERSEY SPILL COMPENSATION FUND, SETTLING DEFENDANTS,  
SETTLING FEDERAL AGENCIES AND SETTLING MUNICIPAL GROUP PARTIES**

This matter is before this Court pursuant to:

A. Paragraph 12 of the above-referenced Consent Decree (the Decree), which provides, *inter alia*,  
that:

**Settling Municipal Defendants Group Provisions**

a. Identity of Group Members. Appendix B shall state the identity of each member of the Third-Party Municipal Defendant Group, and upon execution of this Decree shall constitute the express representation of each member of the Third-Party Municipal Defendants Group signing the Decree that: (i) it has agreed on the internal municipal group allocation of the \$12 million to be paid by the Third-Party

Municipal Defendants Group; and ii) it shall not contest the Third-Party Municipal Defendants Group allocation.

b. Escrow of Funds. On September 22, 2008 the Third-Party Municipal Defendants Group established an escrow account and provided to Plaintiffs reasonable documentation concerning the identity of the escrow agent and escrow depository financial institution. In order to pay for their share of NRD and purchase of the Annuity required herein, Third-Party Municipal Defendants Group within thirty (30) days of entry of the Decree will have funded their escrow account in the amount of not less than \$2.7 million.

c. Liability. The members of the Third-Party Municipal Defendants Group shall not be jointly and severally liable for the under- or non-payment of contributions to the escrow by any of the members of the Third-Party Municipal Defendants Group, however, each such member of the Third-Party Municipal Defendants Group shall be individually liable for its respective share of the estimated \$12 million (which may be adjusted to reflect a lower purchase price for the Annuity) as set out in Paragraphs 4 and 12(a) herein. Each member of the Third-Party Municipal Defendants Group shall also be liable for continuing Interest on any unpaid amounts owed by that member until receipt of payment and the payment of penalties only as set forth in Section VI (FAILURE TO COMPLY WITH CONSENT DECREE), if applicable. The members of the Third-Party Municipal Defendants Group who have satisfied their monetary obligations shall not be subject to reopen for any claims related to the Site except, if applicable, for liability to the Plaintiffs for future conduct after entry of this Decree under the reservations set forth in Paragraph 21(a)(i)-(iv).

d. Accounting and Non-payment. Within thirty (30) days after lodging the Decree, the Liaison Counsel for the Third-Party Municipal Defendants Group shall provide the names of any group members who have made payments, and the combined amount of such payments deposited into escrow by that date. The accounting need not specify the respective share or amounts paid by any individual member of the Third-Party Municipal Defendants Group. Every thirty (30) days thereafter and upon entry of the Decree, Liaison Counsel for the Third-Party Municipal Defendants Group shall provide Plaintiffs with updated information as to the aggregate amount received and Interest as to such amount and the names of the group members who have paid their settlement shares in full and the names of the group members who have made partial payment into escrow. If the Initial Accounting or Revised Accounting has been performed, such report shall include the information specified in Paragraph 10(b)(8) as of the date of the report. In the event a Third-Party Municipal Defendants Group member has not made full payment, including Interest, by February 16, 2009 or ninety (90) days from the date of the entry of the Decree, whichever is later (Municipal Group Payment Deadline), then within two (2) weeks of that date, Liaison Counsel for the Third-Party Municipal Defendants Group shall submit to this Court, counsel for Plaintiffs, the defaulting member and Liaison Counsel an accounting certifying all settlement funds received

from the members of the Third-Party Municipal Defendants Group through the Municipal Group Payment Deadline, and specifying:

For Parties having made full payment: their identity; respective dates of payment(s); and the collective aggregate amounts received from such Parties; and

For any Party which has failed to make full payment of its allocated share: its identity; respective share; respective amount(s) paid and date(s) of payment; and amount of deficiency.

e. Judgment on Consent. In the event that a member of the Third-Party Municipal Defendants Group has not made full payment by the Municipal Group Payment Deadline of its allocated share pursuant to the internal municipal group allocation, including Interest, the matter shall be considered for Judgment upon the request of either Plaintiffs, Liaison Counsel for the Third-Party Municipal Defendants Group, or by this Court, upon its own initiative. After at least ten (10) days written notice to the Court, counsel for Plaintiffs, the defaulting member and Liaison Counsel, and an opportunity for a hearing or submission of documentary evidence, as limited below, a Judgment in the form contained in Appendix C shall be entered against any member of the Third-Party Municipal Defendants Group which did not make full payment, including Interest. Except to contest factual issues as to whether payment has been made, time of payment and amount paid, each such defaulting member of the Third-Party Municipal Defendants Group subject to the Judgment hereby consents to its entry. No other issues but these shall be considered in determining whether judgment shall enter against a member of the Third-Party Municipal Defendants Group who has failed to make full payment. These provisions shall apply in addition to the provisions contained in Section VI (FAILURE TO COMPLY WITH CONSENT DECREE), herein. In lieu of judgment against a defaulting member, EPA and NJDEP can, in their unreviewable discretion, agree to extend payments with Interest. EPA and NJDEP can also confirm an extension in writing to an ability to pay member, who, upon Entry, shall receive the Covenant in Paragraph 19 so long as it complies with the payment schedule.

f. Subsequent Accounting and Relief. The accounting required herein shall be updated upon the request of Plaintiffs, or by this Court upon its own initiative, and any additional amounts due and owing may be reflected in a subsequent Judgment upon application of the Plaintiffs.

g. Effect of Site Lien. Nothing in this Decree shall be construed to waive the effect of any existing or future valid lien on the Site or portion thereof by the United States and or the State Plaintiffs or any agreement between them concerning treatment of lien proceeds. In the event either or both Chester and Washington Township of Morris County, New Jersey, join in such agreement in respect of any tax liens, nothing in this Decree shall be construed to waive the obligations of Chester and/or Washington Township under such agreement. Any such agreement shall be disclosed to the Parties.

B. Paragraph 15 of the Decree, which provides:

If the United States or the State Plaintiffs bring an action to enforce this Decree and prevail or otherwise receive payment under this Section, Settling Defendants and/or members of the Third-Party Municipal Defendants Group who have failed to comply with this Consent Decree against whom such action has been brought shall reimburse the United States and the State Plaintiffs for all costs of such action.;

and

C. Upon notification, as specified in Paragraph 12 of the Decree, of non- or under- payment and after affording the affected Party the opportunity to present documentary evidence at a hearing or otherwise relevant to the amount(s), if any, and dates of payment(s), if any, by said Party; and

**IT APPEARING TO THE COURT THAT:**

1. According to the Certification of Liaison Counsel for the Settling Municipal Group served upon this Court, counsel for Plaintiffs and the [\_\_\_\_NAME OF PARTY\_\_\_\_] pursuant to Section XII (NOTICES AND SUBMISSIONS); [\_\_\_\_NAME OF PARTY\_\_\_\_] is a member of the Third-Party Municipal Defendants Group who has not, as of February 16, 2009, fully funded its allocated share of the Third-Party Municipal Defendants Group's settlement payment, together with Interest, pursuant to Section V (PAYMENT OF RESPONSE COSTS AND NATURAL RESOURCE DAMAGES AND PURCHASE OF ANNUITY) of the Decree;

2. At least ten days written notice of default and the opportunity for a hearing has been provided to [\_\_\_\_NAME OF PARTY\_\_\_\_].

3. [\_\_\_\_NAME OF PARTY's\_\_\_\_] allocated share of the Settling Municipal Group's payment is \$\_\_\_\_\_ and the Interest due through February 16, 2009 is \$\_\_\_\_\_, after application of \$\_\_\_\_\_ from surplus payments, if any, credited towards Interest pursuant to Paragraph 4 of the Decree after Defendants' purchase of an annuity and payment to resolve the Natural Resource Damages. The

amount actually paid by [\_\_\_\_NAME OF PARTY\_\_\_\_] is \$\_\_\_\_\_, so that the balance outstanding from this Party is \$\_\_\_\_\_ as of February 16, 2009; and

**INSERT A VARIATION OF ONE OF THE FOLLOWING FOR PARAGRAPH 4:**

4. [\_\_\_\_NAME OF PARTY\_\_\_\_] has not requested a hearing and has submitted no documentary evidence which would contradict the information contained in Paragraphs 1 and 2 of this Order.

OR

4. [\_\_\_\_NAME OF PARTY\_\_\_\_] requested a hearing, but did not present any evidence which would contradict the information contained in Paragraphs 1 and 2 of this Order.

**THEREFORE, IT IS, THIS \_\_\_\_ DAY OF FEBRUARY, 2009, HEREBY ORDERED THAT:**

Judgment is hereby entered against [\_\_\_\_NAME OF PARTY\_\_\_\_] in favor of Plaintiffs in the amount of \$\_\_\_\_\_, comprised of:

a. \$\_\_\_\_\_ and \$\_\_\_\_\_ due the United States and New Jersey, respectively, representing the [\_\_\_\_NAME OF PARTY's\_\_\_\_] unpaid share of the of the amount specified in Section V to be paid by Third-Party Municipal Defendants Group;

b. \$\_\_\_\_\_ and \$\_\_\_\_\_ due the United States and New Jersey, respectively, representing the [\_\_\_\_NAME OF PARTY's \_\_\_\_] Interest owed in excess of the amount of any Interest credit pursuant to Paragraph 4 of the Decree;

c. \$\_\_\_\_\_ and \$\_\_\_\_\_ representing Stipulated Penalties due by [\_\_\_\_NAME OF PARTY\_\_\_\_] to the United States and New Jersey, respectively, pursuant to Paragraph 14 of the Decree; and

d. \$\_\_\_\_\_ and \$\_\_\_\_\_ representing attorneys fees and other costs to enforce the Decree against [\_\_\_\_NAME OF PARTY\_\_\_\_] due the United States and New Jersey, respectively, through the date of any hearing or submission deadline in connection with this Order; and it is

**FURTHER ORDERED THAT:**

Plaintiffs may make subsequent applications to this Court for additional Interest, Stipulated Penalties and costs of enforcement incurred subsequently; and it is

**FURTHER ORDERED THAT:**

All payments pursuant to this or subsequent Orders shall be in accordance with the payment provisions contained in the Decree.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2008.

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ESTHER SALAS  
United States Magistrate Judge